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In the Supreme Court of the United States

OCTOBER TERM, 1983

STATE OF NEW YORK AND JAMES L. LAROCCA, COMMISSIONER, DEPARTMENT OF TRANSPORTATION OF THE STATE OF NEW YORK, PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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QUESTION PRESENTED

Whether, in a suit in which the Eleventh Amendment bars monetary relief, the existence of an adequate remedy at law in state court precludes a federal court from entering a preliminary injunction against enforcement of an unconstitutional state statute.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-6a) is reported at 708 F.2d 92. The opinion of the district court (Pet. App. 9a-30a) is reported at 552 F. Supp. 255.

JURISDICTION

The judgment of the court of appeals was entered on May 26, 1983 (Pet. App. 33a-34a). A petition for rehearing was denied on July 21, 1983 (Pet. App. 35a-36a). The petition for a writ of certiorari was filed on October 19, 1983. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. The background of this case is set forth in the opinion of the district court (Pet. App. 10a-19a). Because petitioners have not disputed the district court's ruling on the merits, the relevant facts may be briefly summarized.

This suit was brought by the United States to challenge the action of the State of New York to transfer ownership and operation of Republic Airport from the Metropolitan Transportation Authority (MTA) to the New York State Department of Transportation (NYSDOT) and to impose a nighttime ban on the nonemergency use of Republic. Republic serves general aviation aircraft and relieves air traffic congestion at major airports in the New York City metropolitan area by providing an alternate base for such smaller, non-scheduled aircraft. Republic is one of only four airports in the area serving as a reliever airport that is capable of handling all types of aircraft at any time of the day or night in all weather conditions. Pet. App. 11a.

From 1967 to 1982, Republic was owned and operated by the Metropolitan Transportation Authority, a public benefit corporation that is authorized to enter into contracts and to acquire and hold real property. The MTA is independent of and not governed by the New York State Department of Transportation. Pet. App. 12a.

Between 1971 and 1981, the United States conveyed 97 acres of land to MTA at the Republic Airport site. In addition, the United States made nine grants totalling $6.8 million to MTA to acquire and improve the facilities at Republic. The conveyance and grants were subject to a number of covenants that MTA accepted as a condition of the federal aid, including the requirements that MTA keep the airport open to all types, kinds, and classes of aircraft on fair and reasonable terms; that it not dispose of or encumber its title or interest in Republic; and that it not

enter into any transaction that would deprive it of the ability to carry out any of the covenants unless the transaction was approved by the Federal Aviation Administration. Pet. App. 13a-16a. In addition, MTA expressly agreed in one of the grant awards that it would operate the lighting systems funded by the grant " 'throughout each night of the year' " (*id.* at 16a).

In June 1982, the New York legislature enacted a statute that transferred ownership of Republic from MTA to NYSDOT and imposed a mandatory nighttime curfew on the airport for all except emergency uses. The FAA did not approve the transfer of ownership to NYSDOT. Pet. App. 16a-18a.

2. In September 1982 the United States brought this action in the United States District Court for the Northern District of New York against petitioners, the State of New York and its Commissioner of Transportation. The United States alleged that the transfer of ownership of Republic impaired its contract rights with MTA, in violation of the Contract Clause of the Constitution (Art. I, § 10), and that the broad curfew unreasonably affected interstate commerce and interfered with federal regulation of aviation, in violation of the Commerce Clause (Art. I, § 8, Cl. 3) and the Supremacy Clause (Art. VI, Cl. 2). The United States sought injunctive and declaratory relief against the transfer of ownership and the nighttime curfew. Pet. App. 10a-11a, 18a.

Respondents Beechcraft East, Inc., and the Aircraft Owners and Pilots Association (AOPA) joined the action as plaintiffs. Beechcraft leases space at Republic for the sale and servicing of noncommercial aircraft. Beechcraft operates its facilities at Republic on a 24-hour basis. AOPA is an association of general aviation aircraft owners, some of whose members use Republic. Pet. App. 18a-19a.

Beechcraft moved for a preliminary injunction against the nighttime curfew. In support of its motion, Beechcraft submitted an affidavit showing that it would lose substantial business at Republic because of the curfew and that this loss of business would seriously affect its continued operations. Petitioners did not request a hearing on the issue. Pet. App. 19a, 21a-22a.

3. The district court granted the preliminary injunction. With respect to the likelihood of success on the merits, the court concluded that the curfew conflicted with federal law governing aviation and therefore was invalid under the Supremacy Clause (Pet. App. 23a-30a). In addition, the court found that Beechcraft would suffer an " 'actual and imminent' " business loss as a result of the curfew (*id.* at 22a) (citation omitted) and had no adequate remedy at law because the Eleventh Amendment "precludes Beechcraft from obtaining compensatory damages here" (Pet. App. 22a n.9). Following discovery, petitioners moved to vacate the preliminary injunction on the ground that Beechcraft had an adequate legal remedy in the New York Court of Claims. The district court denied this motion (*id.* at 7a-8a).

The court of appeals affirmed the preliminary injunction (Pet. App. 1a-6a). Petitioners did not challenge Beechcraft's showing of a likelihood of success on the merits, and instead limited the appeal to the issue of irreparable injury. The court of appeals rejected petitioners' argument that state law furnished an adequate legal remedy, holding that "in deciding whether a federal plaintiff has an available remedy at law that would make injunctive relief unavailable, federal courts may consider only the available *federal* legal remedies" (*id.* at 4a) (emphasis in original).[1]

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[1]In view of this disposition, the court of appeals did not reach respondents' argument that state law in fact would not permit Beechcraft to obtain damages against New York in the circumstances of this

ARGUMENT

Petitioners challenge the court of appeals' affirmance of the district court's entry of a preliminary injunction. Although not contesting the district court's analysis of the merits, petitioners contend that the courts below erred in concluding that there was no adequate remedy at law because the Eleventh Amendment bars suits for damages by private plaintiffs against a state in federal court. Rather, they argue, federal equitable relief is inappropriate if state law provides an adequate legal remedy. The court of appeals correctly rejected this contention. Moreover, petitioners' contention ignores the principles that should govern the grant of preliminary injunctive relief in this case. Accordingly, further review is not warranted.

1. This Court has long recognized that "no adequate remedy at law exists, so as to deprive federal courts of equity jurisdiction, unless it is available in the federal courts." *Petroleum Exploration, Inc.* v. *Public Service Comm'n*, 304 U.S. 209, 217 (1938) (footnote omitted). Thus, "[i]f a plaintiff is entitled to be heard in the federal courts he may resort to equity when the remedy at law there is inadequate, regardless of the adequacy of the legal remedy which the state courts may afford." *Di Giovanni* v. *Camden Ins. Ass'n*, 296 U.S. 64, 69 (1935). The decision of the court of appeals therefore is in accord with "the settled rule that the measure of inadequacy of the plaintiff's legal remedy is the legal remedy afforded by the federal not the state courts." *Great Lakes Co.* v. *Huffman*, 319 U.S. 293, 297 (1943). See also *Atlas Ins. Co.* v. *Southern, Inc.*, 306 U.S. 563, 569 (1939) (footnote omitted) ("the accepted test

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case. For the reasons stated in the government's brief in the court of appeals (at 23-37), there is, at a minimum, a substantial question whether state law would provide damages for injuries suffered as a result of an unconstitutional statute. (A copy of the government's brief is being lodged with the Clerk of this Court.)

of legal adequacy * * * is the legal remedy which the federal, rather than state, courts afford"). And, at least in the absence of a pending state criminal or other enforcement action (compare, *e.g.*, *Trainor* v. *Hernandez*, 431 U.S. 434, 441 (1977)), there is no basis in principles of comity to require federal courts of equity to defer to state legal remedies. See *Doran* v. *Salem Inn, Inc.*, 422 U.S. 922, 930 (1975); *Steffel* v. *Thompson*, 415 U.S. 452, 462 (1974); see also *Colorado River Water Cons. Dist.* v. *United States*, 424 U.S. 800, 817 (1976).

The cases cited by petitioners (Pet. 10) and amici (Br. 6-7) do not conflict with the decision below. *Matthews* v. *Rodgers*, 284 U.S. 521 (1932), is distinguishable because it was a suit to enjoin collection of a state tax. In holding that the district court erred in granting equitable relief, the Court emphasized the particular need for federal courts to avoid "interfer[ing] by injunction with [states'] fiscal operations" (*id.* at 525). See *Fair Assessment in Real Estate Ass'n* v. *McNary*, 454 U.S. 100 (1981).[2] Similarly, in *Pennsylvania* v. *Williams*, 294 U.S. 176 (1935), the issue was whether a federal district court or the Pennsylvania Department of Banking would supervise the liquidation of an insolvent

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[2]Courts of equity traditionally show "special deference * * * to state autonomy in matters concerning taxation and revenue," and *Matthews* thus constitutes a limited exception to the general rule that "[c]onsideration of the state remedy * * * [is] irrelevant * * *. Only the adequacy of the federal legal remedy would defeat federal equity jurisdiction." Soifer & Macgill, *The Younger Doctrine: Reconstructing Reconstruction*, 55 Tex. L. Rev. 1141, 1156 (1977) (footnote omitted). See also, *e.g.*, Note, *Jurisdiction to Enforce Federal Statutes Regulating State Taxation: The Eleventh Amendment—Section 1341 Imbroglio*, 70 Yale L.J. 636, 642-643 (1961) (footnotes omitted) ("Ordinarily, injunctive relief will issue where there is no 'plain, adequate and complete' remedy available at law in the federal courts. In *Matthews* v. *Rodgers*, however, the Supreme Court noted that a more limiting principle prevails in suits brought to contest a state tax levy"). Congress subsequently codified this principle at 28 U.S.C. 1341.

Pennsylvania corporation. In holding that the district court should have deferred, as a matter of equitable discretion, to the state regulatory agency, the Court noted that the "question is not the ordinary one of comity between a federal and a state court" (294 U.S. at 183), and it stressed that the district court erred in not "refus[ing] to protect private rights when the exercise of its jurisdiction would be prejudicial to the public interest * * *. [In this case] exercise of jurisdiction involves an unnecessary interference by injunction with the lawful action of state officers" (294 U.S. at 185). *Williams* thus did not turn on the adequacy of a plaintiff's legal remedies under state law. See Bartels, *Avoiding a Comity of Errors: A Model for Adjudicating Federal Civil Rights Suits That "Interfere" with State Civil Proceedings*, 29 Stan. L. Rev. 27, 63 n.199 (1976).

It is clear that the federal remedies at law are inadequate in this case. Petitioners do not dispute that, under the Eleventh Amendment, a federal court could not award monetary damages to compensate Beechcraft for the injury caused by the State's invalid curfew. Accordingly, Beechcraft, as a litigant properly in federal court, was entitled to invoke the equitable powers of the court to protect it from such harm.[3]

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[3]Unlike the plaintiff in *Di Giovanni* v. *Camden Ins. Ass'n*, *supra*, upon which petitioners rely (Pet. 13-14), Beechcraft did not seek equitable relief in order to circumvent the jurisdictional limits imposed by Congress on the federal courts. See 296 U.S. at 70 ("The statute forbids resort to equity in the federal courts when they afford adequate legal relief. It does not purport to command that equitable relief shall be given in every case in which they fail to do so. Plainly it does not so command when the want of legal remedy is due to the express prohibition of Congress, applicable alike to suits at law and in equity"). While the grant of equitable relief in *Di Giovanni* would have been contrary to congressional policy, petitioners' claim that there is an adequate

Finally, petitioners' argument would skew the very notions of federalism that they seek to advance. The causes of action involved in this lawsuit arise under the Constitution and laws of the United States. As such, they are appropriate and fit for resolution in federal court. Nothing in our federalist system supports petitioners' assertion that these federal claims must be reformulated in terms of the State's waiver of sovereign immunity (assuming that state law in fact provides an adequate damages remedy, see note 1, *supra*) and submitted to the New York Court of Claims to the exclusion of the federal courts. See, *e.g.*, *Colorado River Water Cons. Dist.* v. *United States*, 424 U.S. at 813-814 (" '[i]t was never a doctrine of equity that a federal court should exercise its discretion to dismiss a suit merely because a State court could entertain it' ") (citation omitted); *England* v. *Louisiana Medical Examiners*, 375 U.S. 411, 415 (1964) (" 'When a Federal court is properly appealed to in a case over which it has by law jurisdiction, it is its duty to take such jurisdiction * * *. The right of a party plaintiff to choose a Federal court where there is a choice cannot be properly denied' ") (citation omitted). The fact that New York has chosen to waive its immunity in state court does not oust a federal court of its authority to adjudicate federal constitutional issues.

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monetary remedy under state law does not in any way render the equitable relief in the instant case inconsistent with the Eleventh Amendment.

Nor is there any basis for petitioners' suggestion (Pet. 5-7, 15) that Beechcraft's injury was insignificant and did not justify the preliminary injunction. The district court correctly found that "Beechcraft has demonstrated a business loss that is * * * 'actual and imminent.' * * * There is no requirement * * * that a party wait until near-extinction before moving for a preliminary injunction" (Pet. App. 22a-23a) (citation omitted).

Of course, a federal court of equity is not obligated to issue a preliminary injunction simply because there is no adequate remedy at law, as such cases as *Williams* and *Di Giovanni* recognize; in exercising its discretion, the court must, among other things, balance the relative equities between the parties and consider the overall public interest in the grant or denial of preliminary injunctive relief. Thus, the decision below does not mean that equitable remedies will be routinely applied in suits challenging state actions. But in considering the need for and appropriateness of equitable intervention, federal courts — at least, as here, in the absence of a pending state action — are not required to stay their hand in deference to state courts and remit plaintiffs to state remedies for the vindication of federal constitutional rights.

2. Beyond their lack of merit, petitioners' contentions do not address the issues that control the disposition of this case. For this reason as well, review of petitioners' claims is inappropriate.

We agree with petitioners that the district court erred in entering the preliminary injunction against the State. But the reason that the injunction was erroneous in this respect is not, as petitioners argue, that there was an adequate monetary remedy under state law. Rather, the injunction directly contravenes the Eleventh Amendment, which by its terms bars the "[j]udicial power of the United States * * * [in] any suit in law *or equity*" against a state (emphasis added). As this Court has recently noted, the Eleventh Amendment precludes "a suit to enjoin the State itself * * * [even though] no money judgment is sought. * * * [The Amendment] clearly applies to a suit seeking an injunction, a remedy available only from equity." *Cory* v. *White*, 457 U.S. 85, 90-91 (1982).

This error, however, does not warrant review of the preliminary injunction by this Court. First, the injunction was entered against the Commissioner of Transportation as well as against the State (Pet. App. 31a-32a). As a prospective decree against an individual state official, the injunction with respect to the Commissioner presents no Eleventh Amendment issue. See *Edelman* v. *Jordan*, 415 U.S. 651 (1974); *Ex parte Young*, 209 U.S. 123 (1908).[4] Because this aspect of the preliminary injunction is fully adequate to afford the necessary relief pendente lite, vacating the injunction against the State *eo nomine* would have no practical effect. Moreover, although the State did not raise the Eleventh Amendment argument below in opposing Beechcraft's motion for a preliminary injunction and has not asserted it in this Court, the State remains free to seek an appropriate modification of the injunction in the lower courts. See *Edelman* v. *Jordan*, 415 U.S. at 677-678. Finally, the decision below is interlocutory; the preliminary injunction will be vacated by operation of law once the district court rules on the federal government's request for a permanent injunction.[5]

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[4]Indeed, in their answer to Beechcraft's complaint, petitioners asserted the Eleventh Amendment as a defense only with regard to the State itself and not with regard to the Commissioner. See C.A. App. 237, 244-247.

[5]We note that if the United States had sought a preliminary injunction (rather than simply supporting Beechcraft's motion), no issue would be presented under the Eleventh Amendment. See *Employees* v. *Missouri Public Health Dep't*, 411 U.S. 279, 286 (1973); *United States* v. *Mississippi*, 380 U.S. 128, 140-141 (1965); *Monaco* v. *Mississippi*, 292 U.S. 313, 329 (1934). In fact, petitioners recognized as much in not raising the Eleventh Amendment as a defense in their answer to the complaint filed by the United States. See C.A. App. 227-235, 446-455. This consideration further indicates the unsuitability of this case for resolving the larger issues raised by petitioners.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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